

§ 4.301 Appraisal report.

(a) *Order for appraisal; date for determining fair market value.* In all probates, at the earliest possible stage of the proceeding before issuance of a probate decision, when the record reveals to the Superintendent: (1) That the decedent owned interests in land located on one or more of those reservations designated in § 4.300 and (2) that any one or more of the probable heirs or devisees, who may become a distributee of such interests upon completion of the probate proceeding, is not enrolled in or does not have the required blood quantum in the tribe of the reservation where the land is located to hold such interests against a claim thereto made by the tribe, the Superintendent shall order an appraisal of the decedent's interests. If there is a surviving spouse whose interests may be subject to the tribal option, the appraisal shall include the value of a life estate based on the life of the surviving spouse in one half of such interests. The appraisal shall be made on the basis of the fair market value of the property, including fixed improvements, as of the date of decedent's death.

(b) *Who may conduct the appraisal; submission of the appraisal report to the administrative law judge.* Qualified appraisers shall appraise the property and submit an appraisal with a summary thereof to the Superintendent. The Superintendent shall file the appraisal report with the administrative law judge and retain a copy in the Superintendent's office. Interested parties may examine and copy, at their expense, the appraisal report at the office of the Superintendent or administrative law judge.

§ 4.302 Conclusion of probate and tribal exercise of statutory option.

(a) *Conclusion of probate; findings in the probate decision.* When a decedent is shown to have owned land interests in any one or more of the reservations mentioned in the statutes enumerated in § 4.300, the probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors shall first be concluded as final for the Department in accordance with §§ 4.200 through 4.282 and §§ 4.310 through 4.323. This decision

will be referred to herein as the "probate decision." At the probate hearing a finding shall be made on the record showing those interests in land, if any, which are subject to the tribal option. The finding shall be reduced to writing in the probate decision setting forth the apparent rights of the tribe as against affected heirs or devisees and the right of a surviving spouse whose interests are subject to the tribal option to reserve a life estate in one-half of such interests. If the finding is that there are no interests subject to the tribal option, the decision shall so state. A copy of the probate decision, to which shall be attached a copy of the appraisal summary, shall be distributed to all parties in interest in accordance with §§ 4.201 and 4.240.

(b) *Tribal exercise of statutory option.* A tribe may purchase all or a part of the available interests specified in the probate decision within 60 days from the date of the probate decision unless a petition for rehearing or a demand for hearing has been filed in accordance with § 4.304 or 4.305. If a petition for rehearing or a demand for hearing has been filed, a tribe may purchase all or a part of the available interests specified in the probate decision within 20 days from the date of the decision on rehearing or hearing, whichever is applicable. A tribe may not, however, claim an interest less than the decedent's total interest in any one individual tract. The tribe shall file a written notice of purchase with the Superintendent, together with the tribe's certification that copies thereof have been mailed on the same date to the administrative law judge and to the affected heirs or devisees.

Upon failure to timely file a notice of purchase, the right to distribution of all unclaimed interests shall accrue to the heirs or devisees.

[36 FR 7186, Apr. 15, 1971, as amended at 55 FR 43133, Oct. 26, 1990; 55 FR 46132, Nov. 1, 1990]

§ 4.303 Notice by surviving spouse to reserve a life estate.

When the heir or devisee whose interests are subject to the tribal option is a surviving spouse, the spouse may reserve a life estate in one-half of such